

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5135 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? NO.

2. To be referred to the Reporter or not? NO.

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3. Whether Their Lordships wish to see the fair copy of the judgement? NO.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO.

5. Whether it is to be circulated to the Civil Judge? NO.

PARSHURAMBHAI JIVRAMBHAI JANEE

Versus

STATE OF GUJARAT

Appearance:

MR PK JANI for Petitioners

MR SA PANDY APP for Respondent No. 1

MR YS LAKHANI for Respondent No. 2

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 24/02/98

ORAL JUDGEMENT

1. Petitioners have approached this Court by filing this application under Section 482 of the Code of Criminal Procedure (to be referred to as " the Code ") to quash the complaint filed by the respondent No.2 in

the Court of Chief Judicial Magistrate at Rajkot for the offences punishable under Sections 506 (2) of the Indian Penal Code.

2. Factual back ground leading to the filing of this application be summarized as under :

Petitioner No.1 had three brothers, namely Chunilal Jani, Shantilal Jani and Ravishankar Jani, who were doing partnership business at Asansol in West Bengal. The said partnership business came to be closed by a dissolution deed and the Income Tax Department was duly informed on 26-3-80. It is further the case of the petitioners that ancestral property situated at Morbi came to be partitioned on 29-9-88 by a registered partition deed and the father of the respondent No.2 who is the original complainant was also a signatory to the partition deed. Thus, it is the case of the petitioners that since 1988 petitioners and the respondent No.2 had separated themselves from the ancestral business and the property. Father of the respondent No.2 namely Chunilal died in the year 1992. Thereafter, respondent No.2 addressed a letter on 19-8-96 to the petitioners which was in a nature of notice-cum warning letter through an advocate in which it is stated that if share of the respondent No.2 will not be separated from the partnership which was run at Asansol, he would initiate appropriate proceedings and the petitioners will have to face consequences. According to the petitioners, they sent a reply on 27-9-96 through an advocate to the respondent No.2 wherein they had pointed out that the partnership was dissolved in the year 1980. Petitioners have also come out with the case that the father of the respondent No.2 namely Chunilal since 1988 to 1992 had not raised the question about his share in the partnership business which remained to be undivided.

3. Respondent No.2 thereafter, filed a complaint on 13-1-97 against the petitioners for the offences punishable under Sections 406, 420, 463, 465, 467, 120 B, and 506 (2) of the Indian Penal Code. The said complaint was registered as Inquiry Case No.18 of 1997. The learned Judicial Magistrate recorded the statement of the complainant and thereafter, issued process against the petitioner vide his order dated 7-6-97 for the offence punishable under Section 506 (2) of the Indian Penal Code. Petitioner has challenged issuance of process by filing this application under Section 482 of the Code.

4. Learned advocate for the petitioner has vehemently argued that there was a partition of the

ancestral business at Asansol in the year 1980 and the father of the respondent No.2 was given his share and the Income Tax Department was also duly informed. It is further submitted that in the year 1988, the ancestral house at Morbi was also partitioned and the father of the respondent No.2 was a signatory to that partition deed. It is further submitted that the father of the respondent No.2 had never raised any dispute with regard to the non-dissolution of the partnership business at Asanasol and respondent No.2 for the first time in the year 1996 raised a dispute by giving notice-cum-warning through his advocate. It is further submitted that the respondent No.2 has filed this complaint with a view to extort money from the petitioner who are staying at Asansol. It is further submitted that the petitioner No.1 is aged 84 years and is not keeping good health and is suffering from heart disease. It is therefore, submitted by the learned counsel for the petitioner that the criminal action was being used as lever to knock out dues when the dispute is exclusive of civil nature.

5. I find great force in the submission of the learned counsel for the petitioner that the complaint lodged by the respondent No.2 is sheer abuse of process of law and criminal action was being used as lever to knock out dues. The complaint prima facie does not establish that the petitioner had visited Rajkot and had given abuses and threatened the respondent No.2 to kill him and to face dire consequences. It is true that this Court at the stage of quashing is not required to go into the merits and demerits of the complaint, but prima facie it appears that the complainant who is the respondent No.2 has filed the complaint with a view to extort money from the petitioners. The partnership firm was already dissolved in the year 1980. The ancestral property at Morbi was also partitioned in the year 1988. Father of the respondent No.2 died in the year 1992 and till 1992, father of the respondent No.2 had never made any grievance that the partnership was not dissolved and he was not given the share in the partnership firm. Therefore, respondent No.2 instead of initiating civil proceeding for partition has filed this criminal complaint with an ulterior motive to extort money. Therefore, in my opinion, the principles laid down by the Supreme Court in the case of State of Haryana and others v. Ch. dBhajan Lal and others reported in A.I.R.1992, SC 604, squarely applies to the facts of the present case.

6. Learned counsel for the respondent No.2 has submitted that this Court while exercising powers under

Section 482 of the Code cannot go into the disputed question of facts and the proper course for the petitioner is to approach the learned Chief Judicial Magistrate who has issued the process. The submission of the learned counsel for the respondent No.2 is devoid of any merit. Prima facie, the complaint appears to have been filed with an ulterior motive to extort money from the petitioners and, in my opinion, it is sheer abuse of process of law. The Supreme Court in the case of M/s. Pepsi Foods Ltd. & Anr. v. Special Judicial Magistrate and Others, reported in 1997 (2) Crimes, 212 has held that the Court while issuing process should not merely act in a mechanical manner and the Court should apply his mind. In paragraph 22 it is held that :

" It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

7. In light of the above observations made by the Supreme Court in M/s Pepsi Foods Ltd. & Anr. (Supra), prima facie the complaint does not disclose the ingredients of Section 506 (2) of IPC. The complaint shows that essentially it is a civil dispute and the complainant by filing complaint tried to convert the civil dispute into criminal case. Therefore, I am of the opinion that this is nothing but sheer abuse of process of law.

8. As a result of the foregoing discussions, I am of the opinion that the complaint lodged by the respondent No.2 before the Chief Judicial Magistrate, Rajkot, which is registered as Criminal Inquiry Case No.18/97 requires to be quashed. Therefore, this application is allowed. Rule made absolute.

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